IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

THURSDAY, THE 23RD AUGUST 2007 / 1ST BHADRA 1929

WP(C).No. 28091 of 2005(T)

AGAINST THE ORDER DATED 7.9.2005 IN IA.843/05 IN OS.167/1999 of MUNSIFF-MAGISTRATE'S COURT,PATTAMBI

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PETITIONER:

MOOSAKUTTY, S/O. KAMMALI,
PARUVINGAL HOUSE, CHERUKUDANGAD AMSOM,
PALLIPPURAM DESOM, OTTAPALAM TALUK,PALAKKAD DISTRICT.

BY ADV. SRI.SANTHEEP ANKARATH

RESPONDENTS:

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1. KRISHNAN NAMBOODIRI,
S/O. KUMARAMPULAKKAL PURUSHOTHAMAN NAMBOODIRI.

2. MOHANDAS, S/O. NADAKKAVIL NARAYANAN.

3. VASU, S/O. ARANATH PARAMBIL KOTHA.

4. SURESH, S/O. ARANATH PARAMBIL KANAKKARAYI.

5. BALAN, S/O. ARANATH PARAMBIL CHAKKAN.

6. THAMI, S/O. POTTAMMAL KARIKKA.

7. VELAYUDHAN, S/O. ARANATH PARAMBIL AYYAPPAN.

8. MANIKANDAN, S/O. ARANATH PARAMBIL CHAKKAN.

9. BALAN, S/O. OTHANKATTU PARAMBIL KUNHADI.

(ALL RESPONDENTS ARE RESIDING AT
CHERUKUDANGAD AMSOM, CHEMBALANGAD DESOM IN
OTTAPALAM TALUK, PALAKKAD DISTRICT.)

BY ADV. SRI.E.R.VENKATESWARAN
SRI.R.SREEHARI

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 23/08/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WPC.28091/05

APPENDIX

PETITIONER'S EXTS:

EXT.P1 – TRUE COPY OF THE PLAINT DT.3.8.99 (O.S.167/99)

EXT.P2 – TRUE COPY OF WRITTEN STATEMENT DT.25.7.2000

EXT.P3 – TRUE COPY OF PLAINT DT.11.1.99 AS O.S.9/99

EXT.P4 – TRUE COPY OF SKETCH AND REPORT BY COMMR., DT.14.1.99.

EXT.P5 – TRUE COPY OF AFFIDAVIT IN SUPPORT OF I.A.843/05 DT.6.9.2005.

EXT.P6 – TRUE COPY OF ORDER DT.7.9.05 IN I.A.843/05 IN O.S.167/99 OF MUNSIFF-MAGISTRATE'S COURT, PATTAMBI.

/TRUE COPY/

PIUS C. KURIAKOSE, J.

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W.P.(C)No.28091 OF 2005

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DATED THIS THE 23RD AUGUST, 2007

J U D G M E N T

Ext.P6 order by which the petitioner's application for joint trial of his suit with Ext.P3 suit (O.S.No.9 of 1999) filed by one Mymoona was dismissed is under challenge in this Writ Petition under Article 227 of the Constitution. It is to be noticed immediately that the plaintiff in Ext.P3 suit was not a party before the court below nor is she made a party in this Writ Petition. The learned counsel for the petitioner submitted that an application seeking impleadment of Smt.Mymoona as a party in the present suit has already been filed by the petitioner. The learned Munsiff-Magistrate dismissed the I.A. noticing that the properties involved in the two suits are different. The learned counsel for the petitioner submitted that both the suits relate to different limbs of a pathway and in that view there is identity between the properties, though in strict sense the properties may be different. The petitioner's suit pertains to that part of the pathway which goes through his property while the other suit pertains to another part of the pathway which goes through the property of the plaintiff in that suit.

2. I find that the learned Munsiff-Magistrate, apart from

highlighting the aspect that there is no identity of subject-matter and that there is only partial identity of parties, has also found that the application has been filed only after the present suit was special listed for trial and in that view found that the application lacks in bona fides.

3. The learned counsel for the petitioner would invite my attention to the judgment of the Supreme Court in **State Bank of India v. Ranjan Chemicals Ltd. and Another** [2007 KHC 3004 = (2007) 1 SCC 97] and submit that for allowing an application for joint trial, it is not necessary that all the questions and issues which arise in the two suits should be common. It is sufficient if there are at least some common issues or some of the evidence to be let in both the suits is common. What is to be considered is whether the two actions arise out of the same transaction or series of transactions. Counsel also submitted that if the two suits are allowed to be decided separately, there is a likelihood of conflicting decisions being taken. The above submissions of the learned counsel are not resisted before me.

4. Under these circumstances, I am of the view that in order to avoid the possibility of conflicting decisions, it is necessary that the two suits should be tried simultaneously. Therefore, even as I decline a

joint trial, I direct the learned Munsiff-Magistrate to try O.S.No.167 of 1999 and Ext.P3 suit simultaneously and dispose of the two suits, if possible, on the same day itself.

The Writ Petition is disposed of as above. No costs.

(PIUS C.KURIAKOSE, JUDGE)

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